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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,984	07/11/2003	Steven D. Weaver	29474 / 04000	4253
27874	7590	12/14/2004		
CALFEE, HALTER & GRISWOLD, LLP 1110 FIFTH THIRD CENTER 21 EAST STATE STREET COLUMBUS, OH 43215-4243				
EXAMINER LINDSEY, RODNEY M				
ART UNIT		PAPER NUMBER		
3765				

DATE MAILED: 12/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/617,984

**Applicant(s)**

WEAVER, STEVEN D.

**Examiner**

Rodney M. Lindsey

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/11/3.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 7 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 7 and 8 "said attachment means" has no antecedent basis. Claims 7 and 8 are confusing as to whether the "means for detachably connecting" is the same as or is in addition to such "means for detachably connecting" already set forth in claim 1.
3. Claims 5, 7 and 10 contain the trademark/trade name VELCRO. Where a trademark or trade name is used in a claim as a limitation to identify or describe a particular material or product, the claim does not comply with the requirements of 35 U.S.C. 112, second paragraph. See *Ex parte Simpson*, 218 USPQ 1020 (Bd. App. 1982). The claim scope is uncertain since the trademark or trade name cannot be used properly to identify any particular material or product. A trademark or trade name is used to identify a source of goods, and not the goods themselves. Thus, a trademark or trade name does not identify or describe the goods associated with the trademark or trade name. In the present case, the trademark/trade name is used to identify/describe hook and loop fasteners and, accordingly, the identification/description is indefinite.

### *Claim Rejections - 35 USC § 102*

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1 and 4-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Romo et al. With respect to claim 1 note the length of resilient material 11 with detachably connecting means 12. With respect to claim 4 note the use of rubber for the resilient material at 11 (see column 2, line 18). With respect to claim 5 note the use of VELCRO by Romo et al. as the detachably connecting means 12 (see column 2, line 33). With respect to claim 6 note the teaching of snaps at 12. With respect to claims 7 and 8 note the kit defined by the templates at 23, 38, connecting means 12 and length of resilient material 11. With respect to claim 9 note Figures 3 and 4 and the football helmet and shoulder pads with first and second attachment substrates and placed on a football player, and the detachably connected length of resilient material 11. With respect to claim 10 note the use of VELCRO strips (see column 2, line 33). With respect to claim 11 note the snaps 12. With respect to claim 12 note the use of rubber for the resilient material 11 (see column 2, line 18).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 2 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romo et al. in view of Newman. With respect to claim 2 Romo et al. do not teach a length of about 16 inches and a width of the widest portion of about 7 inches. With respect to claim 3 Romo et al.

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do not teach a T-shape with crossbar portion. The device of Romo et al. is seen to be capable of being any length which permits it to extend from a location on the helmet to a location on the shoulder pads and therefore the length of the device of Romo et al. is not critical with a length of 16 inches being an obvious possibility to one of ordinary skill in the art at the time of the invention. Newman teaches to widen the portion 4 of a resilient device to provide a secure base for the device against the shoulder pads and thus forming the device into a T-shape. It would have been obvious to one of ordinary skill in the art at the time of the invention to widen the shoulder pad engaging portion of the device 11 of Romo et al. forming it into a T-shape in the manner of Newman to increase its base thus permitting attachment to spread shoulder pads. The exact width of such resulting portion would not have been critical to one of ordinary skill in the art at the time of the invention since all that would have been required is that it be of a width to extend from one should pad to another.

8. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romo et al. in view of Betts. Romo et al. do not teach the resilient material and detachably connecting means with corresponding templates as a kit prior to installation. Betts (see Figure 1) teaches old a kit for attachment to a helmet. It would have been obvious to one of ordinary skill in the art at the time of the invention to form the resilient material and detachably connecting means with corresponding templates as a kit in the manner of Betts to achieve the advantage of permitting a user of the device ready access to all necessary components for installing the device.

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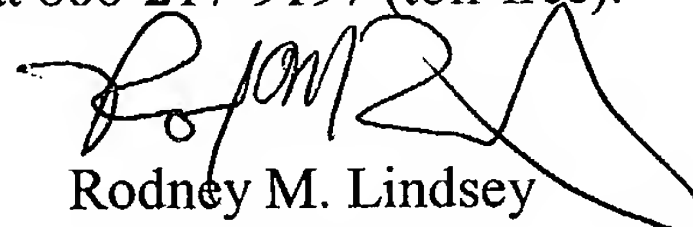
***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Note particularly, the resilient materials at 17 of Phillips and at 3 of Bourdon, and the similar devices of Keim, Gaines, Ackerman, Varteressian, Sims and Shaffer et al.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rodney M. Lindsey whose telephone number is (571) 272-4989. The examiner can normally be reached on M-F (8:30-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Rodney M. Lindsey  
Primary Examiner  
Art Unit 3765

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